BILL NO. S-79-12-02

SPECIAL ORDINANCE NO. S-226-79

AN ORDINANCE approving an amendment to special Ordinance No. 170-76 approving an amendment to Contract No. 63-289-13 between the City of Fort Wayne, Indiana, and National Serv-All, Inc., Contractor, for collection, transportation and disposal of solid wastes in the City of Fort Wayne, Indiana.

WHEREAS, the City of Fort Wayne, Indiana, by and through its Members of the Board of Public Works, did prepare certain specifications and contract documents for the collection, transportation and disposal of solid wastes in the City of Fort Wayne, Allen County, Indiana, which required that sealed bids be received by the Board of Public Works of the City of Fort Wayne, Indiana, at 9:00 a.m. on the 18th day of August, 1976, and

WHEREAS, the Board of Public Works of the City of Fort Wayne, Indiana, did receive sealed bids on said date for the collection, transportation and disposal of solid wastes in the City of Fort Wayne, Indiana, and

WHEREAS, after due deliberation by the Board of Public Works and the Common Council of the City of Fort Wayne, Indiana, a determination was made that National Serv-All, Inc., whose address is 6231 McBeth Road, Fort Wayne, Indiana, 46809, was the lowest and best responsible bidder, and said Board of Public Works of the City of Fort Wayne, Indiana, entered into a contract on the 16th day of September, 1976 with said National Serv-All, Inc., said contract being City of Fort Wayne Contract No. 63-289-13, and

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, did ratify and approve said contract by special Ordinance No. S-170-76, and

WHEREAS, the provisions of I.C. 18-1-6-8 specifically provide that the Board of Public Works is empowered to contract with any individual or corporation for the collection, removal

and disposal of garbage, ashes or refuse, on such terms and for such times as may be agreed upon, and further provides that said contract shall be submitted to the Common Council of the City and approved by Ordinance before said contract shall become effective, and

WHEREAS, said above mentioned contract at page SA-15, paragraph 21 of the general specifications, specifically provides that it was understood and agreed between the parties that the contract was entered into under the circumstances and conditions existing at the time of the execution of the agreement; and, that in the event that there was a change in any conditions or circumstances affecting the terms, conditions or promises contained in the contract, that either party could initiate negotiations directed toward modifying the contract terms, and

WHEREAS, the economic conditions that existed at the time of the contract have changed in such a substantial and excessive manner that the promises and agreements contained in the original contract have now become unfair and oppressive as a result of the excessive and unanticipated economic inflation currently affecting the entire country; the Consumer Price Index now increasing at a rate exceeding thirteen per cent (13%) per year and petroleum fuel costs having increased in excess of forty per cent (40%) per year since January 1, 1979, and

WHEREAS, the Board of Public Works of the City of Fort Wayne, Indiana, and National Serv-All, Inc., having entered into negotiations pursuant to paragraph No. 21 of the general specifications, and having modified Article II of the contract, effective for the contract year beginning January 1, 1980, page CA-1, by amending the general specifications at page SA-12, paragraph 12 "CHANGE IN COST OF DOING BUSINESS", to correct the unanticipated, excessive and unfair changed economic conditions, by changing said specification to permit an adjustment equal

to .93 of the net percentage change in the Consumer Price Index and including a factor for adjustments to the direct fuel costs of the contractor equal to a change of 1.45% per month of the semi-monthly payment for each change of .05 dollars per gallon fuel costs computed on a monthly basis, all as more particularly set forth in said amending contract which is on file in the office of the Board of Public Works and is by reference incorporated herein and made a part hereof; now, therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA THAT:

SECTION 1. It is hereby found and determined that there has been an excessive and unanticipated change in the economic conditions affecting the ability of the contractor, National Serv-All, Inc., to perform that certain City of Fort Wayne Contract No. 63-289-13 entered into between National Serv-All, Inc., whose address is 6231 McBeth Road, Fort Wayne, Indiana, 46809, and the City of Fort Wayne, Allen County, Indiana, a municipal corporation, acting by and through its Board of Works, on September 16, 1976, and that the amendments to said contract negotiated by the Board of Works of the City of Fort Wayne, Indiana, as City of Fort Wayne Contract No. 68-148-35, by its Board of Works, on December 5, 1979, is a fair and equitable adjustment of the rights, duties and obligations of the parties with respect to the collection, transportation and disposal of solid wastes in the corporate limits of the City of Fort Wayne, Indiana.

SECTION 2. That a certain contract, dated December 5, 1979, between the City of Fort Wayne, Indiana, by and through its Mayor and Board of Public Works, and National Serv-All, Inc., contractor, for:

> Collection, transportation and disposal of solid wastes in the City of Fort Wayne, Indiana, amending that certain contract dated September 16, 1976, between the City of Fort

Wayne, Indiana, by and through its Mayor and the Board of Public Works and National Serv-All, Inc., for the collection, transportation and disposal of solid wastes in the City of Fort Wayne, Indiana,

under Board of Works Contract No. 68-148-35, all as more particularly set forth in said contract which is on file in the office of the Board of Public Works and is by reference incorporated herein and made a part hereof, be and the same is in all things hereby ratified, confirmed and approved.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Vivian G. Schmidt
Councilman

APPROVED AS TO FORM & LEGALITY

William N. Salin, City Attorney

Read the first time in full and on motion by V. Schmidt, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-~~County~~ Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__ at _____ o'clock ~~M.,E.S.T.~~

DATE: 12-11-79.

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by V. Schmidt, seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9	0			
BURNS	X				
HINGA	X				
HUNTER	X				
MOSES	X				
NUCKOLS	X				
SCHMIDT, D.	X				
SCHMIDT, V.	X				
STIER	X				
TALARICO	X				

DATE: 12-18-79

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. S-226-79 on the 18th day of December, 1979.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Winfield C. Moses Jr.
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 21st day of December, 1979, at the hour of 10:00 o'clock A. M.,E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 21st day of December, 1979, at the hour of 10:30 o'clock ~~M.,E.S.T.~~

Robert E. Armstrong
MAYOR

Bill No. S-79-12-02 as amended

REPORT OF THE COMMITTEE ON FINANCE

We, your Committee on Finance to whom was referred an Ordinance approving an amendment to special Ordinance No. 170-76 approving an amendment to Contract No. 63-289-13 between the City of Fort Wayne Indiana, and National Serv-All Inc., Contractor, for collection, transportation and disposal of solid wastes in the City of Fort Wayne, Indiana

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS, as amended

VIVIAN G. SCHMIDT - CHAIRMAN — Vivian G. Schmidt

WILLIAM T. HINGA - VICE CHAIRMAN — William T. Hinga

JAMES S. STIER — James Stier

JOHN NUCKOLS — John Nuckols

DONALD J. SCHMIDT — D. Schmidt

68-148-35 H.E.
12/5/79

CONTRACT
CITY OF FORT WAYNE, INDIANA
CONTRACT NO. 68-148-35

AN AMENDMENT TO CITY OF FORT WAYNE, INDIANA, CONTRACT NO. 63-289-13

THIS AGREEMENT, made the 5th day of December, 1979, by and between NATIONAL SERV-ALL, INC., whose address is 6231 McBeth Road, Fort Wayne, Indiana, 46809, hereinafter called the "Contractor", and the CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA, a municipal corporation, acting by and through its Board of Public Works, hereinafter called the "Owner",

WITNESSETH, that the Contractor and the Owner for the consideration stated herein, and pursuant to the provisions of paragraph number 21 of the general specifications, page SA-15, of that certain contract of the City of Fort Wayne, Indiana, number 63-289-13 and approved by the common council of the City of Fort Wayne, Indiana, as special Ordinance No. S-170-76, permitting the modification of said contract due to changed conditions, and necessitated by the excessive and unanticipated economic inflation; the Consumer Price Index now exceeding an annual increase of thirteen per cent (13%) per year and petroleum base fuel costs now exceeding an increase of forty per cent (40%) since January 1, 1979, do hereby agree and amend said basic contract as follows:

City of Fort Wayne, Indiana, contract number 63-289-13 at "ARTICLE II, THE CONTRACT PRICE", at page CA-1, is hereby amended, effective January 1, 1980, by amending the general specifications as follows: At page SA-12, paragraph 12, "CHANGE IN COST OF DOING BUSINESS" is hereby amended to read as follows:

12. CHANGE IN COST OF DOING BUSINESS

The compensation payable to the Contractor for the ~~second~~ fourth and subsequent years of the term hereof shall be adjusted upward or downward to reflect changes in the cost of doing business as measured by fluctuations in the Consumer's

Price Index, published by the U.S. Department of Labor, Bureau of Labor Statistics, for "All Items" in the "U.S. City Average" category. At the start of the ~~second~~ fourth year and every year thereafter, the compensation to the Contractor shall be increased or decreased in a percentage amount equal to .93 of the net percentage change in the said Consumer Price Index computed as follows: Beginning with the first month of the ~~second~~ fourth year, the net change shall be the difference between the said Consumer's Price Index during the month immediately prior to the beginning of the ~~first~~ third contract year and the last month of said year, and said percentage change shall be computed annually in like manner for each subsequent year of the contract.

Example of Computation:

Index Point Change

First month of ~~second~~ fourth year CPI	- 138.9
Less first month of contract CPI	- 132.7
Index point difference	= 6.2

Percentage Change

Index difference divided by the index for the previous period:

$$\frac{138.9 - 132.7}{132.7} \times 100 = 4.67\%$$

Adjustment to Contract

.93 X 4.67% = 4.343%

In addition to the above adjustment, the following evaluation will be made.

Ten (10) days after the beginning of the ~~second~~ fourth and each subsequent contract year, a determination shall be made of the then existing status of the wage scale of regular drivers and laborers of the City Street Department. For each 1% of average rate change over or under the rate prevailing at bid time, the Contractor's yearly compensation shall be adjusted up or down by 3/4 of 1% of his total bid, effective at the beginning of each succeeding contract year. The wage rate at the time of bidding for fully qualified men with over 15 months' experience in the City Street Department of the City of Fort Wayne, Indiana, is $5.01 per hour for drivers and $4.74 per hour for laborers.

In addition to the above adjustments, the following additional evaluation will be made.

Ten (10) days after the beginning of each calendar month of each contract year, a determination shall be made of the then existing direct fuel costs to the contractor, plus or minus, as the case may be, computed monthly, on all

changes in price since the beginning of the prior calendar month, for any such increase or decrease, the sum of 1.45% of the semi-monthly payment, by reason of increases or decreases in the cost of fuel for each .05 dollar per gallon change, shall be added to the contract compensation specified in paragraph 11.

Example of Computation:

Fuel cost 1-1-79 = $.386
Fuel cost 1-31-79 = .436

$.050 divided by .05 = 1.0

1.0 X .0145 X 78,145 (the semi-monthly payment) = $1,133.10

IN WITNESS WHEREOF, we the foregoing named parties, hereunto set our hands and seals on the day and year first above written.

R.E.B.

G. Charles Walbridge, Secretary-Treasurer, National Serv-All, Inc.

CITY OF FORT WAYNE, INDIANA

Robert E. Armstrong, Mayor R.E.B.

BOARD OF PUBLIC WORKS

Henry P. Wehrenberg, Chairman R.E.B.

Ethel H. LaMar, Member

Max G. Scott, Member

ATTEST:

Ursula Miller R.E.B.

Ursula Miller, Clerk/Executive Secretary

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared this 5th day of December, 1979, G. Charles Walbridge, and acknowledged the execution of the foregoing instrument to be his voluntary act and deed for the purposes herein mentioned.

WITNESS my hand and Notarial Seal.

Joan M. Clark
Joan M. Clark
Notary Public
Resident of Allen County, Indiana

My Commission Expires:
10-28-82

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared this 5th day of December, 1979, Robert E. Armstrong, and also Henry P. Wehrenberg, Ethel H. LaMar, Max G. Scott and Ursual Miller, known to me to be the Mayor, the members of the Board of Public Works and the Clerk of said Board, respectively, of the City of Fort Wayne, Indiana, and acknowledged the foregoing agreement to be their voluntary act and deed of such Mayor, members of the Board of Public Works and Clerk of said Board of the City of Fort Wayne, Indiana, respectively, and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal.

Anne J. Fox
Notary Public
Resident of Allen County, Indiana

My Commission Expires:
3-6-80

Approved as to form and legality:

City Attorney

WO ITU ~ 12/5/79

CONTRACT
CITY OF FORT WAYNE, INDIANA
CONTRACT NO. 68-148-35

AN AMENDMENT TO CITY OF FORT WAYNE, INDIANA, CONTRACT NO. 63-289-13

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WITNESSETH, that the Contractor and the Owner for the consideration stated herein, and pursuant to the provisions of paragraph number 21 of the general specifications, page SA-15, of that certain contract of the City of Fort Wayne, Indiana, number 63-289-13 and approved by the common council of the City of Fort Wayne, Indiana, as special Ordinance No. S-170-76, permitting the modification of said contract due to changed conditions, and necessitated by the excessive and unanticipated economic inflation; the Consumer Price Index now exceeding an annual increase of thirteen per cent (13%) per year and petroleum base fuel costs now exceeding an increase of forty per cent (40%) since January 1, 1979, do hereby agree and amend said basic contract as follows:

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12. CHANGE IN COST OF DOING BUSINESS

The compensation payable to the Contractor for the second and subsequent years of the term hereof shall be adjusted upward or downward to reflect changes in the cost of doing business as measured by fluctuations in the Consumer's

Price Index, published by the U.S. Department of Labor, Bureau of Labor Statistics, for "All Items" in the "U.S. City Average" category. At the start of the second year and every year thereafter, the compensation to the Contractor shall be increased or decreased in a percentage amount equal to .93 of the net percentage change in the said Consumer Price Index computed as follows: Beginning with the first month of the second year, the net change shall be the difference between the said Consumer's Price Index during the month immediately prior to the beginning of the first contract year and the last month of said year, and said percentage change shall be computed annually in like manner for each subsequent year of the contract.

Example of Computation:

Index Point Change

First month of second year CPI - 138.9
Less first month of contract CPI - 132.7

Index point difference = 6.2

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In addition to the above adjustments, the following additional evaluation will be made.

Ten (10) days after the beginning of each calendar month of each contract year, a determination shall be made of the then existing direct fuel costs to the contractor, plus or minus, as the case may be, computed monthly, on all

changes in price since the beginning of the prior calendar month, for any such increase or decrease, the sum of 1.45% of the semi-monthly payment, by reason of increases or decreases in the cost of fuel for each .05 dollar per gallon change, shall be added to the contract compensation specified in paragraph 11.

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Fuel cost 1-1-79 = $.386
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$.050 divided by .05 = 1.0

1.0 X .0145 X 78,145 (the semi-monthly payment) = $1,133.10

IN WITNESS WHEREOF, we the foregoing named parties, hereunto set our hands and seals on the day and year first above written.

G. Charles Walbridge

G. Charles Walbridge, Secretary-Treasurer, National Serv-All, Inc.

CITY OF FORT WAYNE, INDIANA

Robert E. Armstrong

Robert E. Armstrong, Mayor

BOARD OF PUBLIC WORKS

Henry P. Wehrenberg

Henry P. Wehrenberg, Chairman

Ethel H. LaMar

Ethel H. LaMar, Member

Max G. Scott

Max G. Scott, Member

ATTEST:

Ursula Miller

Ursula Miller, Clerk/Executive Secretary

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared this 5th day of December, 1979, G. Charles Walbridge, and acknowledged the execution of the foregoing instrument to be his voluntary act and deed for the purposes herein mentioned.

WITNESS my hand and Notarial Seal.

Joan M. Clark

Joan M. Clark
Notary Public
Resident of Allen County, Indiana

My Commission Expires:
10-28-82

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared this 5th day of December, 1979, Robert E. Armstrong, and also Henry P. Wehrenberg, Ethel H. LaMar, Max G. Scott and Ursual Miller, known to me to be the Mayor, the members of the Board of Public Works and the Clerk of said Board, respectively, of the City of Fort Wayne, Indiana, and acknowledged the foregoing agreement to be their voluntary act and deed of such Mayor, members of the Board of Public Works and Clerk of said Board of the City of Fort Wayne, Indiana, respectively, and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal.

Anne J. Fox

Notary Public
Resident of Allen County, Indiana

My Commission Expires:
3-6-80

Approved as to form and legality:

City Attorney

December 11, 1979

NATIONAL SERV-ALL CONTRACT CHANGE
Effective January 1, 1980

I. CPI

Present contract permits CPI adjustment of only 1/4 of the amount of change in the index each year.

e.g., under present contract, if CPI increases 10% in 1979, bid price per unit of collection starting January 1, 1980, goes up only 1/4 of the CPI change or 2.5%.

Under proposed change, if CPI for year 1979 increases 10%, unit price for year 1980 is increased .93% of CPI change, or 9.3%.

II. Fuel Adjustment.

Present contract has no fuel cost adjustment provision.

Under the proposed amendment, if the contractor's cost of fuel increases or decreases after January 1, 1980, the semi-monthly payment thereafter due shall be increased or decreased 1.45% for each 5¢ per gallon change.

E.g., if fuel on February 1, 1980, is up 5¢ over January 1, 1980, the semi-monthly payment due February 15, 1980, will be up 1.45% or approximately $1,133.00.

III. A. Note that the above changes to the contract are to be applicable only in the future. They are in no way retro-active, and, if there is no future inflation or if fuel costs decrease, there will be either no increase in the contract payments, or a decrease.

B. Also, the proposed changes cannot and will not "make-up" any past losses that have been suffered by National Serv-All. In fact, any losses that National Serv-All has suffered this year, it will suffer the next two years unless it makes its operation more efficient.

4752

Admn. Appr. _____

DIGEST SHEET

TITLE OF ORDINANCE Special Ordinance-Contract-National Serv-All, Inc., solid waste collection, transportation, and disposal, Contract No. _____, amending Contract No. 63-289-13.

DEPARTMENT REQUESTING ORDINANCE Board of Works

SYNOPSIS OF ORDINANCE A contract amending Contract No. 63-289-13 between the City of Fort Wayne, Indiana, and National Serv-All, Inc., for the collection, transportation and disposal of solid wastes in the corporate limits of the City of Fort Wayne, Indiana, amending the contract pursuant to paragraph 21 of the general specification, page SA-15, by amending paragraph 12, CHANGE AND COST OF DOING BUSINESS, page SA-12, to adjust the Consumer Price Index adjustment and adding an adjustment for direct contractor fuel cost changes.

EFFECT OF PASSAGE Makes equitable modification to the contract terms for the collection, transportation and disposal of solid wastes within the corporate limits of the City of Fort Wayne, Indiana.

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (Direct Costs, Expenditures, Savings) _____

Will require adjustments to contract payments beginning January 1, 1980.

ASSIGNED TO COMMITTEE (J.N.) _____

DATE SUBMITTED: _____